

HOUSE BILL 2370  
By Kisber

AN ACT to amend Tennessee Code Annotated, Section 39-14-144  
and Section 39-14-145, relative to theft of retail  
merchandise.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-144, is amended by deleting  
the section in its entirety and by substituting instead the following:

39-14-144. (a) Any adult or parent or guardian of a minor who willfully takes  
possession of merchandise in violation of § 39-14-105 for theft offenses or who takes  
possession of merchandise from a retail merchant with the intent to convert the  
merchandise to personal use without paying the purchase price shall be subject to civil  
liability, should the merchant prevail, as follows:

(1) For the adult or emancipated minor:

(A) The greater of two hundred dollars (\$200) or an amount three  
(3) times the listed retail price of the merchandise taken if the merchant  
does not recover the merchandise:

(B) The greater of two hundred dollars (\$200) or an amount three  
(3) times the difference between the value of the damaged merchandise  
and the value of the merchandise prior to its conversion if the merchant  
recovers the merchandise but it is in a damaged state; or

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(C) The greater of two hundred dollars (\$200) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion; or

(2) For the parent or legal guardian having custody of an unemancipated minor:

(A) The greater of two hundred dollars (\$200) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;

(B) the greater of two hundred dollars (\$200) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or

(C) The greater of two hundred dollars (\$200) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion; or

(b) Civil liability under this section is not limited by any other law concerning the liability of parents or guardians or minors.

(c) A conviction for the offense of shoplifting is not a prerequisite to the maintenance of a civil action authorized by this subsection.

(d) The fact that a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages prior to the consideration of the commencement of any legal action.

(e) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction, including a court of

general sessions, if the total damages do not exceed the jurisdictional limit of the court involved.

(f) If a written agreement is entered into between the merchant and the person responsible for damages and penalties pursuant to this section concerning the liability of such person and the payment of such damages and penalties, the agreement and the contents thereof shall remain confidential as long as the parties to such agreement continue to adhere to its terms.

(g) Use of the civil remedy conferred upon merchants by the provisions of this section shall not be construed to be a violation of § 39-16-604, prohibiting the compounding of an offense.

(h) Whenever a retail merchant, the merchant's agent or the merchant's employee apprehends an adult or minor who has committed theft as described in subsection (a), such merchant, agent or employee shall not at such time enter into any written agreement to accept civil damages in lieu of criminal penalties or actually accept any such civil damages.

(i) Any action authorized by this section, the fact of concealment of merchandise by the person accused shall be evidence of intent to convert the merchandise referred to in subsection (a) hereof.

SECTION 2. Tennessee Code Annotated, Section 39-14-145, is amended by deleting the section in its entirety and by substituting instead the following:

39-14-145. (a) Any employee of a retail merchant who willfully takes possession of merchandise in violation of § 39-14-105 for theft offenses or who takes possession of merchandise from a retail merchant with the intent to convert the merchandise to personal use without paying the purchase price shall be subject to civil liability, should the merchant prevail, as follows:

(1) The greater of two hundred dollars (\$200) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;

(2) The greater of two hundred dollars (\$200) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or

(3) The greater of two hundred dollars (\$200) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion.

(b) If a written agreement is entered into between the merchant and the person responsible for damages and penalties pursuant to this section concerning the liability of such person and the payment of such damages and penalties, the agreement and the contents thereof shall remain confidential as long as the parties to such agreement continue to adhere to its terms.

(c) Use of the civil remedy conferred upon merchants by the provisions of this section shall not be construed to be a violation of § 39-16-604, prohibiting the compounding of an offense.

(d) Whenever a retail merchant, the merchant's agent or the merchant's employee apprehends an employee who has committed theft as described in subsection (a), such merchant, agent or employee shall not at such time enter into any written agreement to accept civil damages in lieu of criminal penalties or actually accept any such civil damages.

(e) Any action authorized by this section, the fact of concealment of merchandise by the person accused shall be evidence of intent to convert the merchandise referred to in subsection (a) hereof.

SECTION 3. This act shall take effect June 30, 1998, the public welfare requiring it.